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# INDIAN LEGAL FRAMEWORK FOR FOOD SAFETY AND STANDARDS

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## ABSTRACT

Food is the fundamental need of all living creatures. One cannot think well, love well, sleep well, if one has not dined well<sup>1</sup>. Admittedly, a man cannot live by food alone but yet he cannot do without that even. Beginning from the hunting, gathering era till date, the story of civilization is man's pursuit to feed himself and his family. Access to a minimum amount of nutritious and safe food enjoys sanction by all communities and nations. All faiths the world over believe that feeding the needy and hungry as the greatest virtue and quite a few charities offer food on daily basis like in Amritsar's Golden temple which is called langar and which means free food service, operates round the clock throughout the year without a break and in most of the well-known pilgrimage centers in South India, like Dharmasthala and Tirupati, pilgrims are provided with free food throughout the year. Lot of sanctity and divinity is attached to the act of feeding the hungry in India. In this research paper researchers have tried to discuss the law and regulation regarding food safety and standards in India that is the development of man and nation is not possible without good health because health is wealth. A hungry population is an economic burden. Food is inevitable for the existence of life on earth. It is only off late that we have begun to use the term safe food owing to the wide prevalence of unsafe food in the market in the form of adulterated food, misbranded food, food packed without adequate information on the label about their nutritive value and ingredients that have gone into its preparation, manufacturing date expiry/best before date. Hence, when any judgment, legislation, or provision of law mentions the term food, it implies safe food and food that meets the dietary and nutritive requirements of a person.

**Keywords:** Food Safety, Security & Prevention of Standards

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<sup>1</sup> Virginia Woolf was a British writer, considered one of the most important modernist 20th-century authors and a pioneer in the use of stream of consciousness as a narrative device.

## INTRODUCTION

Food has been defined as “any substance, whether processed, semi processed or raw, which is intending for human consumption and includes drinks, chewing gums, and any substance which has been used in the manufacture, preparation or treatment of food. Hence, the term food implies that it is meant for human consumption and it ought to be safe and standard. It is important to note that community health is national health. A prospective society must have healthy people and adequate good food is inevitable for achieving good health. So the food laws are enacted to protect the consumers against unsafe articles of food and adulteration as well as to protect the honest producers and traders offood. These food laws which fix the standards for quality and safety for different articles of food on par with global standards facilitate the movement of food within and between countries. Food laws have generally been considered to be both for public goodand responsibility to the public. The consumers in India are generally most unorganized and helpless victims of the society coupled with a neutral and soft legal system which is not able to curb the exploitation by the manipulations and machinations of vested interests.<sup>2</sup> Hence, our Indian Constitution has cast a duty on the state to raise the level of nutrition of the people, standard of life of the people and to improve the public health asamong its primary duties and in particular, the state shall undertake to bring about prohibition of consumption of intoxicating drinks except for medicinal purposes. It is a universal truth that even if a person is starving, he does not consume anything knowing fully well that it is not safe, jeopardizing his very existence. In the olden times, when barter system was in vogue, people in general and traders in particular were god fearing and law abiding, all commodities in the market and specifically the food and the articles of food were always safe. After the advent of money, people in general became greedy and wanted to maximize their profits and hoard money. Traders were no exception to this, the social evil of adulteration slowly began to raise its head, spreading its tentacles to all sectors not sparing the food even, ultimately engulfing the entire food sector. Articles of food are more vulnerable for the menace of adulteration as it is the basic need and a consumable, will be in demand all the time as everybody will have to buy it, across all sections of the society irrespective of the barriers like rich, poor, upper caste and lower caste. Due to the weak economic condition of the people in India where major section of the people were economically challenged, were naturally lured by a comparatively lesser price of adulterated food due to its low quality, but

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<sup>2</sup> Webster"s Millenium College Dictionary, Dreamstech India, New Delhi (4<sup>th</sup> edn, 2004)

they were oblivious of the fact of adulteration. Over a period of time, market was flooded with spurious and adulterated articles of food thus affecting the lives of common men. Adulteration of food, reached such alarming heights that the then British government realized the grave need for a legislation for curbing the same and took upon itself the responsibility of passing suitable legislations to prevent and prohibit adulteration of food, stressing on the need to make only the safe food available for human consumption. After India became independent, Prevention of Food Adulteration Act, 1954 was passed. This Act only spoke about the adulteration of food and did not deal with the safety aspect of it. Prevention of Food Adulteration Act only examined if the available food is safe for consumption but did not have provisions to tackle the menace at the initial stage of production or manufacture which resulted in wastage of food. The Researcher strongly believes that when the food is scarce, we cannot afford to waste it. To plug this lacuna, legislature passed the Food Safety and Standards Act, 2006 not only to curb adulteration and prohibit the availability of unsafe food but also stressing on the need to make the articles of food more safe, the Act is self-explanatory. But what is worrying the Researcher is the kind of substance used to adulterate the articles of food. The traders of food in a scurry to maximize their profits have ceased to be humane towards the society and have overlooked their responsibility to the human kind. Even various international instruments have dealt with the aspect of right to food as a basic human right. When they refer to food, it is implied that it is meant for human consumption and it ought to be safe food only<sup>3</sup> Any unsafe food for that matter becomes fodder and not food. But in the present days even fodder will have to be safe and standard as the owners of the farm animals are interested in maximizing the produce, due to which the intake of the cattle is carefully chosen so that output can be bettered. When so much care is accorded to the animals, human beings deserve a better treatment.

Food is inevitable for the existence of life on the earth. Food, a basic necessity of life, derives its importance from the fact that it stimulates the appetite and supplies a variety of ingredients that give energy (carbohydrates, fat, dietary fibre); replace worn out tissues, thus promoting growth (protein); and help in preventing and curing diseases (vitamins and minerals). Food is a building block for the growth of both mental and physical body. When we use the term food, it is always implied that it is something edible by human beings or is meant for human consumption because of which it has to be safe, nutritious and standard as per the accepted norms by the law. Hence, the word food always connotes that it is „safe“ though it

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<sup>3</sup> Ibid

is not evident in its terminology due to which food always means safe food only. The concept of healthy eating for healthy living and longevity is not new. Apart from serving a biological need, food has become an economic and political weapon.

## MEANING OF FOOD SECURITY

It is the condition in which all people at all times have physical, social and economic access to sufficient, safe and nutritious food that meets their dietary needs and food preferences for an active and healthy life"<sup>4</sup>. "Food security means that: all people at all times have both physical and economic access to enough food for an active, healthy life; the ways in which food is produced and distributed are respectful of the natural processes of the earth and thus sustainable; both the consumption and production of food are governed by social values that are just and equitable as well as moral and ethical; the ability to acquire food is ensured; the food itself is nutritionally adequate and personally and culturally acceptable; and the food is obtained in a manner that upholds human dignity"<sup>5</sup>. Food security has been defined by the World Bank as „access by all people at all times to enough food for an active and healthy life“. Food security can be categorised into Community food security and Household food security. “Community food security exists when all citizens obtain a safe, personally acceptable, nutritious diet through a sustainable food system that maximizes healthy choices, community self-reliance and equal access for everyone.<sup>4</sup> A household is said to be food secure when all members of the household or a family have an access to the food which is adequate in terms of quality, quantity, and safety and culturally acceptable, needed for a healthy life and when the household is not at undue risk of losing such access to food. The economics of food security will, therefore, not only have to be viewed in terms of budgetary outflow by way of food subsidy and other costs, but also in terms of strengthening the food entitlement of the people, particularly those belonging to the vulnerable sections of society<sup>5</sup> There cannot be food security without self-sufficiency and control of local resources. Human right to food, which in essence means food security, however remains a hollow paper postulate if it rests on economic, political and social conditions which make its realization impossible. Food security and food sovereignty cannot be guaranteed by either huge private concerns or centrally controlled states. The Researcher thinks that all of us need to realise that food security cannot be expected from those who are politically responsible but we as consumers can create

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<sup>4</sup> Public Health Association of British Columbia

<sup>5</sup> Partha Pratim Mitra, “Economics of Food Security: The Indian Context”, Social Action [January-March, 1996] Vol 46 No1

it in cooperation with farmers. In Japan, such clubs, called Seikatsu Clubs, have been primarily founded by house wives the women's market in West Africa, Ghana. The entire food supply is in the hands of these market women. They are very powerful. When they close the market, everything grinds to a halt. Most importantly, although they supply the population well with foods They do not do so according to the capitalistic principles of profit maximizing. According to a statement of Aba Amissah Quainoo from Ghana, the market women cannot be moved to sell just any anonymous product on the market just because it was brought from somewhere and is cheap. The market women have their arrangements with their producers, and they keep their word. A good relationship to the farmers-often women-is more important to them than easy money. Although there is a market here, it is not capitalistic not aimed at accumulation. Because of these market women and their principles of a moral economy", food security for the people of Ghana even in times of crisis has been achieved

Issues of food security and poverty have been recognized as necessary conditions for the creation of a stable socio-political environment for sustainable economic development. Food for all the ultimate mission of all food strategies from micro to macro level seek to make sure the sustainable availability and affordability of food for everyone on earth. It is, therefore, not surprising that eradication of extreme poverty and hunger was one of the eight millennium development goals set to be achieved by 2015. But, ironically even today over a billion people in the world remain unfed and malnourished. In fact, the world food production at 3.9 billion tonnes is adequate to feed its 7.7 billion population Yet globally, around a billion are reported to suffer from hunger. Ditto with India-with 277.49 million tonnes of food production as on February 2018, a 0.9% growth over previous year, millions still go to bed hungry<sup>6</sup>. The Researcher wonders if it can be realistic to achieve the mandate of Zero Hunger World by 2030-set by the Food and Agriculture Organization of UN when we have been witnessing the crushing effects of hunger and malnutrition on the lives of the poorest and the most vulnerable people. The advisory of FAO this year reads as Don't waste food, produce more withless. Adopt a more healthy and sustainable diet.

## **DIMENSIONS OF FOOD SECURITY**

Food security has got three dimensions namely food availability, access to food and

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<sup>6</sup> *Food for all: saving sharing is caring*", Deccan Herald dated 24/10/2018, Bengaluru Edition

utilization of the food. The food availability deals with supply side of the food security, makes sure that sufficient quantity of quality food either from import or domestic market is available for a common man. This is only to ensure that the food available in certain territory/place/country is adequate in quantity to feed the people taking into consideration local agriculture production, stock level of food grains and net import and export. The second dimension deals with access to food, which means that just because the food is available in adequate quantity in a particular territory/country/region does not ensure that they have enough food to eat. This dimension of food security considers income, expenditure and buying capacity of individuals and households. It is necessary to ensure that people have enough purchasing power to acquire the food that they need. Another dimension of food security is food utilization, which considers not how much food, the people eat but what and how they eat. For healthy life, food available should be of desirable quality as well as quantity to meet nutritional requirements. In essence it encompasses preparation of food, distribution among different households, sanitation and health care practices. In a nutshell food security involves production, availability, access and utilization.

## MEANING OF FOOD INSECURITY

Food insecurity is a situation when people are deprived of access to food at the outset or lack access to food which meets their dietary requirements: food which is not culturally acceptable for that particular section of the society: food which does not meet the nutritional requirement. "it has become common practice to estimate the number of food insecure households by comparing their calorie intake with required norms. The government has been implementing a wide range of nutrition intervention programmes for achieving food security at the household and individual levels<sup>7</sup> Dearden and Cassidy, the authors, who have authored „Food Security: an ODA View state that “food insecurity is the most fundamental manifestation of absolute poverty Food Insecurity can be categorized into Chronic food security and Transitory food insecurity. “Lack of minimum requirement of food to the people for a sustained period of time due to extended periods of poverty, lack of assets and inadequate access to productive or financial resources can be called as Chronic Food Insecurity Sudden lack of food or reduction in the ability to produce or access minimum requirement of food due to short-term shocks and fluctuations in food availability and food access, including year-to-

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<sup>7</sup> Radhakrishna, “Food and Nutrition Security of the Poor, Emerging Perspectives and Policy Issues”, Economic and Political Weekly, [April 30-May 6, 2006] Vol XL No18, p 1817-1821

year variations in domestic food production, food prices and household incomes can be defined as Acute or Transitory Food Insecurity and requires emergency measures such as rushing of food supplies

## **MEANING DEFINITION AND OF ADULTERATION UNDER THE PFAA**

Adulteration connotes mixing of something spurious or of inferior quality to any commodity which lessens its purity and makes it dangerous for use. Any material which is or could be employed for the purposes of adulteration is called adulterant<sup>49</sup>. Section 2 (i a) of the Act lists out the instances where the articles of food may be considered to be adulterated<sup>8</sup> An article of food, being a primary food, is not deemed to be adulterated where the quality and the purity of it has decreased below the prescribed standards owing to the natural causes which are beyond the control of human agency.

## **GENESIS OF FOOD SAFETY LAWS IN INDIA**

One of the main concerns of national governments is that any food produced in the country or imported from outside is safe and does not pose a threat to human, animal or plant health. Therefore, national governments have their own mandatory standards and regulations to avoid such threats

## **PREVENTION OF FOOD ADULTERATION ACT, 1954**

The laws regulating the quality of food have been in force in the country since 1899. Since the early 1950's Parliament has endeavoured to craft an anti-food adulteration law that can be fruitfully enforced. -In a social welfare state, public health is the main responsibility of the state and so the state should endeavour to protect the health of citizens from insanitation, environmental pollution, malnutrition and adulteration of food items<sup>39</sup>. Food adulteration has been a constant problem in India. As early as 1950 parliament concluded that food adulteration was rampant<sup>9</sup>. Even after 13 years parliament discovered that the problem of adulteration of food was increasing rather than decreasing even after PFAA had come into being. The Act was only a beginning to curb the socio-economic crime which was posing a threat to the society and also to breaking down the image of white-collar criminals as upstanding citizens. Till 1954

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<sup>8</sup> Under section 2 (ia) of the PFAA, an article of food can be said to be adulterated

<sup>9</sup> The Gazette of India, 1950, Part II, Sec 5

different states had enacted their own laws governing food leading to ambiguities and confusions in the rules and standards for food affecting the inter provincial trade. Adulteration of articles of food was so rampant, widespread and persistent that nothing short of a somewhat drastic remedy in the form of a comprehensive legislation became the need of the hour<sup>42</sup>. The Central Advisory Board appointed by the Government of India in 1937 and the Food adulteration Committee appointed in 1943 jointly reviewed the subject matter of food adulteration and recommended a need for a central legislation. The Constitution of India has conferred on the Central government to make such legislation as the subject of food has been enlisted in the Concurrent List. It is the duty of the Ministry of health and family welfare to ensure the supply of safe food to the consumers. In the light of this the Prevention of Food Adulteration Act 1954 was enacted with the sole objective of protecting the public from poisonous and harmful foods, to prevent the sale of substandard foods, to protect the interests of the consumers by eliminating fraudulent practices by the traders who were in food industry. It is enacted to curb the widespread evil of food adulteration and is legislative measure for social defence<sup>10</sup> The object of PFAA has been outlined by the Apex court in *Dinesh Chandra v. State of Gujarat*<sup>44</sup>. In the later part of 20<sup>th</sup> century, the menace of adulteration of articles of food had grown to such bad heights that nothing short of stringent remedy and absolute liability could change the situation arising out of the deep rooted evil. Having realised that only a resolute onslaught of this anti social behaviour could bring relief to the society, the Prevention of Food Adulteration Act was enacted and was applicable to the whole of India including Jammu and Kashmir The Act came into effect from 15<sup>th</sup> June 1955, repealing all laws existing in different states concerning adulteration of food. The production, sale, accumulation or distribution of adulterated or misbranded food was prohibited under the Act<sup>46</sup>. Section 5 of the Act prohibited the import of adulterated and misbranded food and the import of any other food articles was allowed strictly in accordance with the terms of the license only. In this respect, the law pertaining to sea customs also applied and the customs officials had the same powers in respect of adulterated and spurious articles of food as they had in respect of goods prohibited under the Sea Customs Act <sup>11</sup>The PFAA broadly covered standards for food, general procedures for sampling, analysis of food, powers of authorised officers, nature of penalties, parameters relating to food additives, preservatives, colouring agents and packing and labelling of foods. The Act to some extent regulated the consumer –supplier relations. It also ensured

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<sup>10</sup> The words –except the state of Jammu and Kashmir – omitted by Act (4) of 1971, Section 2 w.e.f 25/1/1972

<sup>11</sup> Ibid



that food is prepared, packed and stored hygienically. It gave a comprehensive definition for the term adulteration 'that it became impossible for the adulterators to escape from the offences as enumerated under the Act. Inter alia, the Act provided for the establishment of a Central Food Laboratory which analysed the samples of food and gave a final opinion in disputed cases. The Act also established the Central Committee for food standards and vested the central government with powers to stipulate the standards of quality for food and other allied articles of food.

Also, wheretwo or more articles of primary food are mixed together and the resultant article of food is stored, sold or distributed under a name, which denotes the ingredients thereof; and is not injurious to health, such an article is not deemed to be adulterated It is the fundamental principle of criminal jurisprudence that no person should be punished without a guilty mind. The departure from mental element as an important element for an offence is that all crimes seem to be the result of the doctrine of Laissez-faire which means maximum liberty and freedom from interference by the State, lost its dominance in favour of social interest in the 20<sup>th</sup> century. This compelled the individual interest to be relegated to backdrop and became secondary and gave way to social interest. In the light of this, the modern social welfare states have to take care of the health of the people. The State cannot discharge this obligation effectively unless it equips itself with progressive legislations. Eventually, the State to protect the society from the misdeeds of few individuals, wide spectrum of statutory regulations have been passed mandating a set of standards to be maintained in the consumable goods. The States are basically concerned with purity, minimum quality of food articles, drugs and medicines. Because of this, the 20<sup>th</sup> century common law lawyers termed the whole group of such offences as -public welfare offences<sup>60</sup>. Finally, criminologists have also opined that the object underlying the correctional treatment must be changed from mere punishing people to the fruitful one of protecting the social interest. In this 20<sup>th</sup> century, due to the raising complexities from all corners there is a demand for more and more social regulations to cater to the needs of the society. The courts have also justified the modern legislative stand with convincing emphasis concentrating on the injurious conduct of the defendant rather than on the problem of his degree of guilt. Thus the trend of dispensing with mensrea is not an accident but the result of changing social conditions. In tune with this trend, the courts have also trodden the new path ignoring the state of mind of the offender. The Researcher thinks that, the days are not far when the courts might abrade mensrea even in other criminal offences and the physical act may alone be punished in the interest of the society. The Researcher thinks that in

heinous crimes, the perpetrators must be absolutely held liable irrespective of his mensrea. This development has caused an apprehension in the minds of the jurists that the mensrea may absolutely be done away with. The Indian Penal Code defines every offence with reference to the specific state of mind of the accused. The wording of the offences are either prefixed or suffixed as knowingly, involuntarily, fraudulently, dishonestly. It is important to understand that offences relating to adulteration have also been defined in the similar way. Section 273 of Indian Penal Code, 1860 provides that whoever knowingly sells the food stuff which is unfit for human consumption, shall be punished. This shows that the much celebrated doctrine of mensrea has not been ignored. PFA also ignored the doctrine of mensrea and the same is evident from section 19 (1) of the Act which provided that it shall be no defence in a prosecution for an offender pertaining to the sale of the adulterated or misbranded food articles to set up a defence that he was ignorant of the nature, substance or quality of food sold by him. So it is clear that sale of adulterated article is punishable even though the vendor has no knowledge of its being adulterated. Knowledge of adulteration constitutes mensrea aggravating the offence<sup>61</sup>. To keep the PFAA alive and to abreast of the changes in the society, the Act was thoroughly amended in 1976. Section 16 dealing with the Penalties was amended and stringent penalties were provided depending on the gravity of the offence<sup>62</sup>. In order to speed up the proceedings under the Act, Section 16-A was inserted which ordained Summary trial of cases<sup>12</sup>. It is interesting to note that magistrates were conferred power to award more punishment than they could under the Cr.P.C<sup>64</sup>. A careful reading of the penal provisions indicated that the legislature weighed the cry of millions of people more important than few corrupt persons by prescribing stringent measures. The courts after weighing the individual freedom on the one hand and social interest on the other have stressed on strict liability and the same may be known from *Bhagawan Das Jagdish Chandra v. Delhi administration* in which the Supreme Court clearly dealt with absolute liability and observed –It is now well established that for establishing an offence under the Prevention of Food Adulteration Act, it is not necessary to establish mensrea either on the part of the manufacturer or distributor or vendor. Even knowledge on the part of all of them that the food was adulterated is not necessary. Ignorance on the part of any one of them that the food was adulterated would not absolve them of liability In *A.P.G&S. Merchants Association v. Union of India*<sup>13</sup> the petitioner contended that the Act imposed unreasonable restrictions as Section 16 (1)(a) of the Act created absolute

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<sup>12</sup> 16A. Power of court to try cases summarily.—Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), all offences under sub-section

<sup>13</sup> (1971) 1 SCJ 518: AIR 1971 SC 2346

liability and imposed severe penalties for storage and sale or distribution of articles of food found to be adulterated or misbranded or prohibited by law. The Supreme Court rejected this contention and held that for the protection of society, ensuring the purity of articles and preventing malpractices by the trader, the severity of penalties imposed by the Act, is not very disproportionate to the risk involved that it could be deemed to be unreasonable. The Act was amended thrice in 1964, 1976 and in 1986 to keep pace with the new requirements and to make it more suitable to tackle the then emerging issues. These amendments to some extent plugged the loopholes and made punishments more stringent, empowered the consumers and voluntary organisations to play a pivotal role in its effective implementation. In most of the states the implementation of the Act was under the administrative control of the directorate of health sciences. The penalties were set out and appropriate legislative amendments were made considering the gravity of offences and the offences were categorised based on punishment extending up to life imprisonment. The provisions under PFA Rules have been amended nearly 360 times and standards of around 250 articles of food which are of mass consumption have been prescribed<sup>67</sup>. While amending, standards prescribed by codex, social and cultural practices, improvements in the food industry, dietary habits and nutritional status of our people were taken into consideration.

## **FOOD SAFETY AND STANDARDS ACT, 2006**

Multiplicity of laws relating to food, standard setting and enforcement agencies spread through the different sectors of food, due to which ambiguities and confusions galored in the mind of investors, manufacturers, traders and consumers. –However nothing can be farther from truth. Individual food products are not homogenous across countries, different countries and firms adopt different performance standards and safety and quality norms and, moreover, buyers cannot ascertain the quality of food products merely by physical inspection. To complicate matters further, India had too many archaic food laws and too many ministries implementing these laws. This impedes the healthy growth of the Indian food industry in a liberalised world<sup>14</sup> Requirements under various laws regarding admissibility, contaminants, preservatives, levels of food additives, food colours and other allied parameters had varied standards. These standards were often rigid, contradictory and non-responsive to modernisation and scientific improvements. In the light of this scenario, it was realised that multiplicity of

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<sup>14</sup> Nutraceutical is a new word, invented by Dr. Stephen DeFelice in 1989. It is two words put together: nutritional and pharmaceutical. Nutraceuticals are dietary supplements that are also called functional foods. Oxford Dictionary Thesaurus 2001, Indian edition, Oxford University Press

laws and their enforcement, specification of different standards under different laws, different enforcement agencies under different laws were unfavourable for the survival and growth of burgeoning food sector/processing industry. It was also realised that the situation was unfavourable for the effective fixation of standards for food and also for enforcement agencies to work efficiently. Foods for special dietary purposes or nutraceuticals<sup>111</sup> or functional foods or health supplements which had flooded the food market were omitted from the purview of all laws. There was no specific law applicable to them. There was no liability or the concept of self-regulation on the food business operator to deal with the safe food under PFSA, but it was the duty of the food inspectors to ensure the availability of safe food to the people. Indiscreet flooding of the market with unscrupulous imported goods was rampant. Food safety<sup>112</sup> became an important health issue. As countries witnessed a growth in International food trade, development of complex food types, processes and handling, there was a parallel rise in the level of awareness on different food and water borne diseases. Food safety became a growing global concern. In the year 1998, the Prime Minister's Council on Trade and Industry appointed a subject group on Food and Agro Industries, which recommended for a single comprehensive legislation on food under which one food regulatory authority would be established investing it with the power of monitoring the food sector in the entire country. In 2004, the Joint Parliamentary Committee on Pesticides Residues had stressed on the need to merge all prevailing food laws and have a single regulatory body for all matters concerning food. The committee expressed its concern for public health and food safety in the country. In April 2005, the Standing Committee of Parliament on Agriculture in its 12<sup>th</sup> report expressed its ambition to have a legislation, integrating all the food laws and also urged for expediting the formalities and process of formulating one. In pursuance of these suggestions, the then Member Secretary, Law Commission of India was required to conduct a review of food laws prevailing in various developing and developed countries and the international instruments pertaining to it. After making the required survey at the international scenario, the then Member Secretary, recommended for the promulgation of new food law, for promoting emerging food processing industries taking its income, employment generation and export potential into consideration. It was also recommended that all existing food laws and orders be subsumed within the impending Act as the trend at the international level was towards modernization and assimilation of regulations relating to standards of food with the removal of multi level and multi departmental control. It was also suggested to lay a special emphasis on responsibility with the producers/manufacturers of food, safety of food good manufacturing practices, and process control namely hazard analysis and critical point, functional foods, genetically

modified food, food recall, risk analysis and emergency controls. All these recommendations and suggestions with appropriate modifications found expression in the way of an integrated food law-Food Safety and Standards Bill, 2005. As expressed in the Bill, the main objective was to bring about a single Act pertaining to food and to provide for a systematic and scientific development of food processing industries, to establish a single food authority to fix standards for food regulate the production/manufacturing, importing processing and distribution /sale of food. The Bill hoped to achieve the availability of only the safe and wholesome food even to last man in the society. The food authority would be supported by Scientific Committees and Panels by prescribing the standards and by a Central Advisory Committee in prioritizing the work. The enforcement mechanism under the Act would include State Commissioner for Food Safety, his officers and Municipal bodies or Panchayati raj. Among other things, the Bill incorporated the salient features of the erstwhile PFAA. The prescribed standards for food were based on international legislations and Codex Alimentarius Commission<sup>113</sup>. To concise, the Bill considered the international practices and policy framework regarding providing single window authority to guide and to monitor persons engaged in manufacture, marketing, processing, handling, transportation, importing and sale of food. This Bill was posted for public comments. The President of India signed the Bill on August 23, 2006 and was finally enacted as The Food Safety and Standards Act, 2006 subsuming the PFA and eight other different legislations

### **FOOD SAFETY AND STANDARDS ACT, 2006 (FSSA)**

The FSSA has 12 Chapters containing 101 Sections and Two Schedules. This Act has three tier structure, an Apex Food Safety and Standards Authority of India (FSSAI) at the top assisted by a Central Advisory Committee and various Scientific Panels and Committees.

### **GENERAL PROVISIONS AS TO ARTICLES OF FOOD**

These General provisions deal with the presence of food additive or processing aid, contaminants, naturally occurring toxic substances, heavy metals, pesticides, residues of veterinary drugs and antibiotics and micro biological counts. It also deals with genetically modified foods, organic foods, functional foods, packaging and labeling of foods.

### **FOOD SAFETY OFFICER AND HIS POWERS**

According to Section 37, the CFS in consultation with the State government can appoint

Food Safety Officers for such local areas as it may assign to them for the purpose of performing its functions under the Act. Section 38 of the Act details the powers of the Food safety officer, which include collection of a sample of any article of food, seizing of any article of food which in the opinion of the Food safety officer to be in contravention of the Act or Regulations, power to enter and inspect any place where the article of food is manufactured or processed or stored for the purpose of sale or stored for the manufacture of another article of food. While exercising the powers of entry and seizure, the Food Safety Officer ought to follow the provisions of Criminal Procedure Code<sup>181</sup> which is contemplated under Section 93 of Criminal Procedure

### **LIABILITY OF THE FOOD SAFETY OFFICER IN CERTAIN CASES**

Section 39 makes the Food safety officer liable under certain circumstances like, when he without any reasonable ground or veraciously seizes any article of food or adulterant; does any other act which injures any other person without any reason to believe that such necessity existed for the discharge of his duty, he will be guilty of an offence under FSSA and may be liable for a penalty which may extend upto 1lakh rupees. On the other hand if anybody makes a false complaint against the Food Safety officer and the complaint is proved to be false, the complainant will be punishable with fine which shall not be less than Rs50,000 and can extend up to 1lakh rupees.

### **JUDICIAL RESPONSE UNDER PFAA**

In Northan Mal v. State of Rajasthan<sup>15</sup> the food inspector, purchased chilli powder from the appellant to check adulteration and subjected it for analysis. The public analyst certified that the sample contained ash to the extent of 8.38% by weight. The lower court convicted the appellant. But the apex court on appeal acquitted the appellant and held that it is unsafe to uphold the conviction of the appellant as the ‘adulteration found in the sample was marginal’ and also did not rule out the possibility of there being an error in the analysis. In Gauranga Aich v. State of Assam<sup>16</sup> a mere addition of salt to chilly powder was held to make it injurious to health and was held adulterated on the ground that the quality and purity of chilly powder had deteriorated below the prescribed standard. In State of Rajasthan v. Ladu Ram<sup>70</sup>, though the respondent was selling milk without a valid license, was acquitted on the ground that rational reasons were recorded by the magistrate for his acquittal. In Kailash Chandra v.

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<sup>15</sup> 1995 Cri.L J 2661

<sup>16</sup> 1990(2) FAC41

State of U.P.<sup>17</sup>, in this case, the quantity of salt found in the sample was marginally excess from what was depicted on the label and the appellant was convicted by the trial court for false and misleading statements on label. In appeal, the appellant was acquitted as the court opined that the presence of adulterant was only marginal and not harmful. In *M. Eswaraiah v. State of A.P.*<sup>18</sup> the Food Inspector purchased atta and submitted it for analysis for the public analyst. Here also the adulteration being marginal, Revision was allowed and the conviction was set aside.

## CONCLUSION

The preamble of the Constitution of the World Health Organization, projects a vision of the ideal status of health as the eternal and universal goal. It establishes the indivisibility and interdependence of rights as they are related to health of the people. It recognizes the enjoyment of the highest attainable standard of health as a fundamental right of every human being. Despite the tremendous increase in agricultural production, reaching adequate standards of food security and food safety at the household level is still a goal to be achieved<sup>1</sup>. The Right to safe food is essentially a second generation human right and is plagued with the same issues of enforceability as all other economic, social and cultural rights<sup>2</sup>. Right to safe food is multi-dimensional, hungry bellies on one hand and unsafe food that the market has been swarmed with, on the other. Of course, we have legislations to tackle both these aspects but ironically the authorities under these Acts are not coordinating with each other. There has to be a harmonious working of these two sets of authorities. Food adulteration is common in India. Even milk, consumed primarily by children, is not spared. What's particularly worrying the Researcher, is the kind of substances employed to adulterate, including toxic chemicals. This shows that the trade off between the risk of getting caught and the reward of huge profits is skewed heavily in favour of the adulterator. The government must focus on raising the risks to the adulterator. One way of doing this is by hiking the penalty, including making it analogous to attempt to murder in extreme cases. It's equally important to regularly check foodstuff for adulteration and ensure speedy trials. In India, food industry is of different sizes such as the organized sector, small scale and unorganized sectors.

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<sup>17</sup> 2001 All LJ 2753

<sup>18</sup> 1998 CriLJ 204 (P&H).